

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

Safeway, Inc.	
t/a Safeway	Fact-
3830 Georgia Ave., NW	Finding
Retailer B - ANC-4C	Hearing
License No. 93822	

(New License Application)

February 12, 2014

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MIKE SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

P-R-O-C-E-E-D-I-N-G-S

(1:45 p.m.)

CHAIRPERSON MILLER: We can start.

We're going to call the case. It's Safeway at 3830 Georgia Avenue, N.W., License No. 93822, in ANC-4C. And this is a Fact-Finding Hearing concerning whether the layout meets the regulations in which full-service grocery store is defined.

So that's why we are here to have a dialogue with you and you can explain how you think that your plans show that you meet the test and I think Mr. Jones will, for the most part, explain any concerns he may have or that maybe he doesn't and you will figure out, we will all figure out where you are and if any changes need to be made.

So why don't we start with your introducing yourselves for the record?

MR. MOORE: Good morning, Madam Chair and Members of the Board. My name is Jerry Moore and I'm here on behalf of Safeway,

1 Inc. With me is Avis Black, the Director of
2 Real Estate of the Eastern Division of
3 Safeway, and Scott Jacob, who is the Senior
4 Design Manager for Safeway. We are pleased to
5 be here. Thank you for the opportunity.

6 CHAIRPERSON MILLER: Thank you.
7 Okay. We are glad to have you. Right now, if
8 I could ask for your indulgence for just a
9 couple more minutes, we will --

10 PARTICIPANT: he said start
11 without him.

12 CHAIRPERSON MILLER: He said start
13 without him? Okay. We'll see.

14 MEMBER ALBERTI: Actually, I think
15 we should wait for -- I think it's better if
16 Mr. Jones is here, because I think Mr. Jones
17 has looked at these plans. He will have very
18 focused questions for you. And I think it
19 works better and it's more efficient for him
20 to start with the questions that he has for
21 you about your plan, because you can tell us
22 all you want about your plans and he is still

1 going to have to ask you these questions.

2 He has sort of analyzed your
3 plans. The questions he has about the
4 measurements, about what goes into which
5 category and so I think it's best if we wait
6 for him. And he will just zero in on what he
7 needs to know from you, at this point. So I
8 think that that's probably best.

9 MR. MOORE: We have no objection
10 to that.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER ALBERTI: Okay.

13 MR. MOORE: But may we ask, Madam
14 Chair, may I divert to offer a little
15 diversion from the established protocol for
16 this? I have read the transcripts of the
17 Walgreens' Protest Hearing and of the Little
18 Red Fox Fact-Finding Hearing of --

19 CHAIRPERSON MILLER: Okay.

20 MR. MOORE: -- Connecticut Avenue
21 and of the -- each market proceeding on
22 Columbia Heights, in Columbia Heights, Mt.

1 Pleasant and I just have a few things I would
2 like to mention to you prior to getting into
3 the test that's at issue which is before us
4 today.

5 CHAIRPERSON MILLER: Okay. And --

6 MR. MOORE: If you grant us that
7 indulgence.

8 CHAIRPERSON MILLER: -- I would
9 like the record to reflect that Mr. Jones is
10 here, too, so he can hear what you have to say
11 as well.

12 MR. MOORE: Thank you. First of
13 all, we are here because of the statute. The
14 statute says that the primary purpose of a
15 full-service grocery store has to be the
16 primary business and purpose to sale a whole
17 range of fresh, canned and frozen food items
18 and the sale of alcoholic beverages is
19 incidental to the primary purpose. The sale
20 of alcoholic beverages constitutes no more
21 than 15 percent of the total volume of gross
22 receipts on an annual basis. The

1 establishment is located in a Commercial
2 District.

3 That is not a glancing blow to
4 Safeway, ladies and gentlemen, that's a direct
5 hit. That explains what Safeway is all about,
6 has been all about, is all about and projects
7 to be all about into the immediate future.

8 I would ask you to consider and I
9 have a copy for you, if you would like,
10 Safeway's 10k form, which is required to file
11 and to state its purposes to the Federal
12 Government.

13 And just by way of summary, the
14 company began operations in 1926. Safeway,
15 Inc. is one of the largest food and drug
16 retailers in America with 1,641 stores at the
17 end of 2012. Safeway stores provide a full
18 array of grocery items with a portion tailored
19 to local preferences. Most stores offer a
20 wide selection of food and general merchandise
21 and feature a variety of special departments,
22 such as bakery, delicatessen, floral, seafood

1 and pharmacy. All consistent with the Act.

2 Now, I have a copy for the Board
3 that I --

4 CHAIRPERSON MILLER: Okay.

5 MR. MOORE: -- will --

6 CHAIRPERSON MILLER: Yeah, we
7 would love a copy. Thank you.

8 MR. MOORE: -- give to you. Also
9 in your record, there is a Statement of
10 Appropriateness from Safeway where we say
11 Safeway -- hold still, I've got a couple more.
12 Safeway is the District of Columbia's largest
13 provider of grocery-related services. Safeway
14 offers its customers a selected menu of beer
15 and wine products among the tens of thousands
16 of grocery items and retail services that are
17 available, consistent with District of
18 Columbia Law.

19 Third, this is not a case of first
20 impression. Safeway has been granted grocery
21 store status by the Department of Finance and
22 Revenue in accordance with the Section 47-3800

1 of the District of Columbia's Official Code
2 where it says "Supermarket means a self-
3 service retail establishment independently
4 owned or part of a corporation operating a
5 chain of retail establishments under the same
6 trade name that is licensed as a grocery store
7 and offers a set of a full-line of meat,
8 seafood, fruits, vegetables, dairy products,
9 dry groceries, household products and
10 sundries."

11 This has been granted by the D.C.
12 Department of Tax and Revenue not once, not
13 once, ladies and gentlemen, but six times.
14 Six times Safeway has been found by the D.C.
15 Government Department of Tax and Revenue to be
16 a full-service grocery store.

17 In addition, the Board of Zoning
18 Adjustment, who Ms. Miller should know about,
19 and the Zoning Commission have each found in
20 cases relating to the Piney Branch Road
21 Safeway, relating to the Good Hope Road
22 Safeway, relating to this Safeway in Zoning

1 Commission Case No. 11-09, the Zoning
2 Commission referred to Safeway as a grocery
3 store 16 times. 16 times in its final order
4 approving the PUD.

5 I have here for the record the
6 Zoning Commission's order in the Piney Branch
7 Road case and in the case that provided the
8 Planned Unit Development for this development
9 to go forward.

10 In addition, this is not a case of
11 first impression before this Board. The ABC
12 Board has found that -- Safeway to be a full-
13 service grocery store no less than nine times.
14 Nine times in the last few years. Safeway has
15 10 licenses in the city, one of them is an A
16 License. The others are B Licenses.

17 Safeway has been found to be a
18 full-service grocery store in each of those
19 cases. In all of Safeway stores the Zoning
20 Regulations allow for a grocery store use in
21 a Commercial District and in all of Safeway
22 stores, the Zoning Administrator has found

1 Safeway's use to be consistent with Section,
2 just a minute, 701.1(1) of the District of
3 Columbia Zoning Regulations, which basically
4 says that "The intended use here is of as a
5 grocery store."

6 I mean these are the licenses that
7 Safeway has as a full-service grocery store.
8 It could not get any of those licenses without
9 a finding by this Board that it is a full-
10 service grocery store.

11 In addition, I have here copies of
12 business licenses that Safeway has obtained
13 from the city to operate its stores. In each
14 of them, Safeway is delineated as a grocery
15 store. Nothing else, not a drug store, not a
16 convenience store, not a corner store, but a
17 grocery store. Okay?

18 Safeway status as a grocery store
19 in the District of Columbia has never been
20 challenged. Never. And in this case, I would
21 think that there is sufficient evidence in the
22 record, in the record, to - for this Board to

1 invoke the judicial notice that is take notice
2 that Safeway, Inc. is a grocery store.

3 It is the type of use in the city
4 that the City Council chose to grant an
5 exemption for. If Safeway is not a full-
6 service grocery store, then Hilton doesn't
7 operate hotels, Coke doesn't produce soft
8 drinks, Ford doesn't make cars. It's a
9 commonly known fact that Safeway is a full-
10 service grocery store.

11 And I'll just give you the
12 definition of a judicial notice "To avoid
13 burdening the judicial system, all
14 legislatures have approved court rules that
15 allow a court to recognize facts that
16 constitute common knowledge without requiring
17 proof from the parties, the most common
18 judicially noticed facts include the location
19 of streets, buildings, geographic areas,
20 periods of time and business customs."

21 Safeway is, it has been, it will
22 continue to be a full-service grocery store

1 into the future.

2 Now, with that said, we ask the
3 Board to consider the doctrine of judicial
4 notice. It would save the Board time, it
5 would save the full-service grocery stores,
6 the Whole Foods and the Giants and the Harris
7 Teeters a lot of time and energy. And if
8 someone wants to challenge any of these
9 entities to be full-service grocery stores,
10 sue me, sue me.

11 This Board has been granted the
12 authority to use its judgment to determine
13 what a full-service grocery store is. That's
14 your expertise. And I would suggest to you
15 that Safeway is a full-service grocery store.

16 Now, we have submitted some
17 documents into the record by way of a floor
18 plan. And we are happy to address any
19 questions that Mr. Jones or any of the other
20 Board Members may have in that regard. Thank
21 you.

22 CHAIRPERSON MILLER: Okay. Thank

1 you very much. Are there any questions or
2 comments right now? Otherwise, we can do that
3 after Mr. Jones goes through the document with
4 him.

5 MR. MOORE: Madam Chair and Mr.
6 Jones, I just wanted to make sure you have the
7 drawings that were -- revised drawings that
8 were submitted to Mr. Moosally this morning?

9 CHAIRPERSON MILLER: I'm sorry,
10 I'm sorry. Go ahead, what did you ask?

11 MR. MOORE: I just wanted to make
12 sure that the -- Mr. Jones and the Board has
13 the revised drawings and floor plan and
14 calculation, use calculations that were sent
15 over to Mr. Moosally this morning.

16 CHAIRPERSON MILLER: I think that
17 we do. We don't --

18 MEMBER JONES: So noted.

19 CHAIRPERSON MILLER: I don't know
20 if we have copies for everyone or am I
21 mistaken, Mr. Jones? Am I mistaken? I
22 thought that we got --

1 MEMBER SILVERSTEIN: The revised?
2 Is it labeled?

3 MEMBER JONES: We have the revised
4 copies that were received this morning. Thank
5 you.

6 CHAIRPERSON MILLER: I just want
7 to say that I know I heard what you said and
8 your words are well-taken and I may have some
9 comments afterwards.

10 MR. MOORE: Okay.

11 CHAIRPERSON MILLER: But I think
12 we should go through this first. Okay.

13 MEMBER JONES: All right.

14 CHAIRPERSON MILLER: Mr. Jones?

15 MEMBER JONES: Cool. Thank you,
16 ma'am or Madam Chair.

17 So we did receive these drawings
18 and as you noted, we did receive them this
19 morning. So I will tell you quite candidly,
20 I can't say that we have had an opportunity to
21 go through them in full arduous detail that we
22 normally would. However, based on a cursory

1 review, I did have some questions. I just
2 wanted to make sure we were on the same page
3 in terms of how we, as a Board, are processing
4 the information that's being provided to us in
5 terms of evaluating and assessing whether or
6 not you meet the criteria.

7 Are you open to this opportunity
8 right now?

9 MR. MOORE: Absolutely.

10 MEMBER JONES: All right.

11 MR. MOORE: Mr. Jacobs will be
12 responding to your questions on that.

13 MEMBER JONES: Mr. Jacobs?

14 MR. MOORE: On the technical
15 aspects of the plan.

16 MEMBER JONES: Mr. Jacobs,
17 welcome.

18 MR. JACOBS: Thank you.

19 MEMBER JONES: All right. So I'm
20 not sure if you have been -- had an
21 opportunity to speak with Mr. Moosally. Well,
22 let me back up. Are you familiar with the

1 criteria that are noted in the regs?

2 MR. JACOBS: Yes.

3 MEMBER JONES: Okay. So you are
4 familiar with the concept that there is a Test
5 1 and a Test 2?

6 MR. JACOBS: Yes.

7 MEMBER JONES: Okay. So Test 1
8 has to do with your overall square footage,
9 whether or not you meet 50 percent or have
10 more than 6,000 square feet dedicated to food
11 sale items or grocery sale items as stipulated
12 by the seven criteria that we have defined as
13 what seven -- what food category -- what food
14 items are, that's Test 1.

15 MR. JACOBS: Yes.

16 MEMBER JONES: Test 2 has to do
17 with whether or not, of those seven
18 categories, six of those seven constitute 5
19 percent or more of the food selling area.

20 MR. JACOBS: Yes.

21 MEMBER JONES: Okay. And that's
22 what you have provided to us is documentation

1 to substantiate or support your position that
2 you meet those criteria, Test 1 and Test 2?

3 MR. JACOBS: That is correct.

4 MEMBER JONES: All right. Fair
5 enough. And just to make sure that we are
6 further on the same page, I have in front of
7 me a drawing that I do not have a date on or
8 that I can identify quickly a revision number.

9 MR. JACOBS: Um-hum.

10 MEMBER JONES: But just to
11 confirm, there is a drawing that we received
12 this morning that we based our initial
13 assessment on or review on was -- looks like
14 this for the overall floor area as well as the
15 second page, which appears to denote or
16 identify more concisely the food, particular
17 food categories.

18 And just to make sure, hopefully
19 we are speaking to the same version, I'm going
20 to read off of the bottom where the numbers
21 are calculated and just make sure that we have
22 the same numbers that we are working towards.

1 So there is an area at the very
2 bottom, there is a table. The table says
3 "Total Floor Selling Area" and the first
4 category noted is total floor selling area as
5 34,100.

6 MR. JACOBS: That is correct.

7 MEMBER JONES: Okay. That's the
8 correct version is what I'm looking at?

9 MR. JACOBS: Yes.

10 MEMBER JONES: Correct?

11 MR. JACOBS: Correct.

12 MEMBER JONES: All right. Further
13 confirmation. The second page related to the
14 specific food category items. There is a --
15 once again, there is a table at the bottom of
16 that page. That table says "Total Food
17 Selling Area" and there are seven categories
18 listed. One of the first categories or the
19 first category noted is produce, fresh fruits,
20 vegetables, noted as 3,716 square feet with a
21 percentage of 19.02 percent. Is that version
22 correct?

1 MR. JACOBS: Yes.

2 MEMBER JONES: Okay. So thank you
3 for your patience with that. I just wanted to
4 make sure we were speaking to the same sheet
5 or playing to the same sheet of music as we go
6 through this. Okay.

7 Have you had an opportunity to
8 speak with anyone in ABRA related to how the
9 process is for making a determination of
10 passing testimony?

11 MR. JACOBS: Not directly. We
12 actually received an email and a written
13 description of what was required, based on the
14 -- some information, pieces of information.

15 MEMBER JONES: Okay.

16 MR. MOORE: Mr. Jones, I'll say --

17 MEMBER JONES: Sorry, sir?

18 MR. MOORE: -- I have met with Mr.
19 Moosally twice.

20 MEMBER JONES: Okay.

21 MR. MOORE: He has been very
22 forthcoming and very helpful.

1 MEMBER JONES: Excellent. So as
2 far as Test 1, my first question or request
3 for feedback from you would be are you seeking
4 passage via the 50 percent threshold, the
5 6,000 square foot threshold or it is -- or you
6 are not making that determination, at this
7 time?

8 MR. MOORE: 6,000 square feet.

9 MEMBER JONES: You're going for
10 6,000 square feet. Okay. Given that, if you
11 -- one of the areas that I had an opportunity
12 to look at was -- first and foremost, I don't
13 know if Mr. Moosally or anyone explained this
14 to you, but we, as you noted in your initial
15 opening statements and summarizing the effort
16 and what goes into it, there is some effort
17 that goes into this, because we take the time
18 to independently verify the information that
19 you provide to us.

20 So we actually go through and make
21 the calculations and make the determination
22 based on our calculations and match them up

1 against what information you provided to us.

2 Given that, one of the things I
3 have noticed in the drawings is that I do not
4 see or I'm not able to discern whether or not
5 there is enough information here for us to
6 make that independent calculation, i.e., there
7 are no dimensions that are laid out in terms
8 of this length along here is 37 feet. This
9 length along here is 28 feet or the overall as
10 well as the individual areas that are noted.

11 Am I -- is that an oversight on my
12 part or is that information clearly
13 identifiable in here or is it the expectation
14 that we would use some type of scale?

15 MR. JACOBS: Right.

16 MEMBER JONES: Okay.

17 MR. JACOBS: I mean, if -- you
18 know, the drawing can be -- it is done to
19 scale. I don't know if the drawing that you
20 have -- it's probably 1 equals a foot, 1/8th
21 of an inch equals a foot.

22 The calculation that was done was

1 basically based on, like I say, the
2 calculation that was given to Mr. Moore by
3 Moosally, which essentially took three feet
4 out from any fixture from the back of that
5 fixture in which a customer can reach from and
6 taking just in general, i.e., the shelves.
7 And we took 3 feet out in front of that.

8 So every fixture that you see on
9 this picture plan, basically, denotes 3 feet
10 around that particular item in addition to the
11 item that has the product that sits on it.

12 MEMBER JONES: Okay. So fair
13 enough, understood. So just to make sure we
14 are on the same page. So the 3 feet comes
15 into play for Test 2. The 3 feet doesn't
16 necessarily come into play for Test 1. So
17 Test 1, what we are looking for are -- go
18 ahead. Yes, I'm sorry.

19 MR. JACOBS: No, no, go ahead.

20 MEMBER JONES: Okay. So for Test
21 1, given that you are looking for the 6,000,
22 you are trying to pass via the 6,000 square

1 foot threshold, there needs to be enough
2 information here that we can clearly identify
3 that there is 6,000 square feet or more
4 dedicated to the food selling area that we can
5 independently verify in that sense.

6 So typically, I don't know what
7 was conveyed to you, but typically we look for
8 that food selling area to be a contiguous
9 space, right? A contiguous space of food
10 selling area.

11 So if you look at your drawing
12 that is provided, there is an area that is
13 called food selling area and that's light
14 blue. And that light blue area is broken down
15 into various segments. Those segments in a
16 defining of your food selling area, those
17 segments would need to be connected in some
18 kind of way.

19 So there would be a blue box that
20 is connecting -- if you look at the top of
21 your drawing that was provided, there is a --
22 when I say the top, I apologize. This is what

1 I'm referring to as the top of the drawing.

2 MR. JACOBS: Okay.

3 MEMBER JONES: There is a single
4 blue box where it looks like -- I'm not really
5 sure what that fixture is, but it looks to be
6 next to your registers.

7 MR. JACOBS: Um-hum.

8 MEMBER JONES: That blue box is
9 defined as part of your food selling area.

10 MR. JACOBS: Right.

11 MEMBER JONES: And it is separate
12 and distinct from the food selling area where
13 a lot of the, what I call, typical grocery
14 store aisles are located there. To define
15 your food selling area, some of that space
16 that is pink between that blue box is isolated
17 in the rest of that area, would need to be
18 tied to -- they need to be tied together.

19 MR. MOORE: Mr. Jones?

20 MEMBER JONES: Yes, sir?

21 MR. MOORE: I'm sorry. Permit me
22 to interrupt you. I just think I have an

1 answer to your question. On your second
2 drawing, AP2, you see that blue area next to
3 the cash register that you speak of is defined
4 as dry groceries and baked goods.

5 MEMBER JONES: It is?

6 MR. MOORE: Yes.

7 MEMBER JONES: Understood. Okay.

8 I'm not sure, did you -- were you
9 understanding where I was going or --

10 MR. JACOBS: No, no, I understand,
11 but -- yeah, I understand. In terms of that,
12 right, we have the two drawings. And what I'm
13 understanding in terms of -- you've got the
14 first drawing. Basically what we have is the
15 total floor selling area, which is the area in
16 the pink.

17 And then from that, we have the
18 blue area, which is basically the total food
19 selling area. So that is what drawing this
20 drawing is here.

21 MEMBER JONES: So AP1?

22 MR. JACOBS: That is right. Then

1 it is further broken down into little
2 categories. The categories --

3 MEMBER JONES: Understood.

4 MR. JACOBS: -- seven categories.

5 MEMBER JONES: Right. So --

6 MR. JACOBS: Correct.

7 MEMBER JONES: -- let's not
8 address the categories yet, because --

9 MR. JACOBS: Okay.

10 MEMBER JONES: -- that's part of
11 Test 2. I'm just focusing solely on Test 1.
12 Right? And so for -- so let's look at it this
13 way. Based on the information you provided to
14 us, based on your numbers, you have a
15 calculation of your food selling area being
16 19,538 square feet. We would need to be able
17 to, one, independently verify that and then,
18 two, I need to understand how you came to that
19 19,538 square feet.

20 And what I am assuming, based on
21 the conversation we are having now and what
22 I'm looking at in your drawings, you just took

1 the individual areas that are in light blue,
2 summed up the totals of their individual
3 square footage to get this number and then you
4 are using that number as a basis for what your
5 food selling area is?

6 MR. JACOBS: Correct.

7 MEMBER JONES: Okay. Where that
8 is slightly skewed from how we typically apply
9 the rule is the overall -- when you are doing
10 the 6,000 square foot test --

11 MR. JACOBS: Um-hum.

12 MEMBER JONES: -- the square foot
13 age that is applied for your food selling area
14 is a contiguous space. So you have an overall
15 area that is connected with all of your food
16 selling areas that you are going to have
17 identified and that's your total square
18 footage for your food selling area.

19 MR. JACOBS: Um-hum.

20 MEMBER JONES: So for example,
21 what is the area of the space between the dry
22 groceries, baked goods, next to your cash

1 register and the food selling area directly
2 below that, which is also noted as dry
3 groceries and baked goods? Is that just an
4 open hallway or open walkway for people to
5 walk through?

6 MR. JACOBS: Could you point to it
7 in the plan which area you are speaking of?

8 MEMBER JONES: Certainly. This
9 top blue area.

10 MR. JACOBS: The top blue area,
11 right, is --

12 MEMBER JONES: And this blue area.
13 There is a space right here.

14 MR. JACOBS: Right. The space
15 that is in between will be considered as non-
16 food selling area.

17 MEMBER JONES: Okay.

18 MR. JACOBS: That's circulation
19 where you would -- if you want to consider,
20 you know, circulation, right.

21 MEMBER JONES: So we would
22 consider this to be part of your food selling

1 area, because this is providing access for
2 your individual patrons to gain access to
3 either this food selling area or that food
4 selling area.

5 So if you drew a box around here,
6 this is part of your food selling area, so
7 this square footage would be included in that.

8 MR. MOORE: I'm sorry.

9 MEMBER JONES: For Test 1.

10 MR. JACOBS: Yes.

11 MR. MOORE: Mr. Jones, I have not
12 seen anything in the regulation that requires
13 food service. I'm not picking on things, I'm
14 just making a point here.

15 MEMBER JONES: Feel free, I'm used
16 to it.

17 MR. MOORE: That requires a food
18 selling area to be contiguous. What the
19 regulation says is that --

20 MEMBER JONES: I don't argue that.
21 What I'm telling you is that how we typically
22 applied it has been that sense.

1 MR. MOORE: The regulation has got
2 to give us some information as to how the
3 Board is going to apply this thing. We have
4 applied this to the best of our knowledge
5 given the wording of the regulation and the
6 meetings that we have had with Mr. Moosally.

7 Even if you took that blue area
8 next to the cashier stand out of that, we
9 would still have significantly more food
10 selling area --

11 CHAIRPERSON MILLER: Right.

12 MR. MOORE: -- than the statute --
13 than the regulation requires.

14 MEMBER JONES: No. I don't debate
15 that at all.

16 MR. MOORE: Then I would ask the
17 Board not to hold us up. What could --

18 CHAIRPERSON MILLER: Okay.

19 MR. MOORE: -- I would ask the
20 Board to --

21 MEMBER JONES: Sir?

22 MR. MOORE: -- do we meet the

1 basic criteria per the regulations?

2 MEMBER JONES: Sir? Part of the
3 reason why we are having this meeting is to
4 help address any miscommunication or any
5 misunderstanding there may be in how we apply
6 the rules and what you inferred based on your
7 interpretation and the conversation that you
8 had.

9 MR. MOORE: Oh.

10 MEMBER JONES: So why is it
11 relevant? So I am challenging not that you
12 meet Test 1, based on your 6,000 square foot
13 threshold, the concern is that that number
14 directly rolls into how you make your
15 evaluation for Test 2.

16 If you have, due to no fault of
17 your own at this point, misrepresented what we
18 interpret to be the overall food selling area,
19 when you take that number and you divide it
20 into what you have determined to be your
21 categories for a particular, say for example,
22 fresh produce, fruits and vegetables, if you

1 are saying that that number is only 19,538
2 square feet and you eliminated or have taken
3 out some things that would typically be used
4 and calculate it towards your food selling
5 area, then your denominator is going to be
6 artificially lower than what it should be
7 based on our standard approach.

8 MR. MOORE: I do respect what you
9 are saying, sir. But I will also say in
10 response to that there is more than enough,
11 significantly more than enough area to meet
12 the Board's baseline criteria. If there are
13 some small items there that are not perfect,
14 I would ask the Board to consider no harm, no
15 foul as long as we are at that baseline and I
16 think we are miles above the baseline, sir.

17 MEMBER JONES: I don't necessarily
18 -- I don't know that I have enough information
19 to agree with your statement. I don't argue
20 that you are about 6,000 square feet based on
21 the information that you have provided based
22 on your numbers.

1 One, I cannot independently verify
2 that and that's part of the process.

3 Two, even if we assume that that's
4 the case, that you have passed on Test 1, I do
5 not know that I have enough information here
6 to confirm that you have passed on Test 2 for
7 six of the seven criteria, because if your
8 number is artificially low, then your
9 denominators are artificially low and,
10 therefore, your percentages are going to be
11 artificially high.

12 MR. MOORE: But as long as those
13 percentages are consistent with the
14 regulation, there should be no harm, no foul,
15 sir.

16 MEMBER JONES: You are right. But
17 we --

18 MR. MOORE: That's what I would
19 ask for.

20 MEMBER JONES: -- have to be able
21 to -- we have to have enough information to
22 make that determination, sir.

1 MR. MOORE: All right, sir.

2 CHAIRPERSON MILLER: Okay. What
3 I'm hearing though is there is a difference.
4 I don't have the right plans in front of me.
5 I don't know if you have extras. I tried to
6 get some from before, but whether or not that
7 one piece sounds like whether it is counted as
8 connected or not connected, is one issue. But
9 if you count it as not connected, can you --
10 does that affect the measurements that you are
11 trying -- you know, other things if you are
12 trying to measure, you know, the length of
13 certain -- or the denominators?

14 I mean, can we use it? Can we do
15 the -- I don't see why we can't do the
16 calculation interpreting the regs in the way
17 that they interpret it.

18 MEMBER JONES: Well --

19 CHAIRPERSON MILLER: To see how it
20 affects the --

21 MEMBER JONES: -- there is a
22 matter of consistency. So we have a certain

1 approach that we have applied to previous
2 individuals or entities that have been before
3 us and we should apply them fairly across the
4 board.

5 CHAIRPERSON MILLER: Well, this is
6 the first time I have heard this issue, but
7 I'm just saying from what I'm hearing, he is
8 saying that we are all well-aware of Safeway
9 common knowledge-wise and so there may be more
10 than one way to look at the measurements. I'm
11 just not sure that that -- does that mean we
12 can't move along and look at the measurements
13 and say okay, if we calculate it this way it's
14 one option. That's all.

15 MEMBER JONES: There is nothing to
16 say that we -- oh, go ahead, Mike.

17 MEMBER SILVERSTEIN: I was going
18 to -- I'll go because I was going to explain
19 what you were going to say and you're
20 perfectly capable of saying it yourself.

21 MEMBER JONES: There is nothing
22 that prevents us from moving forward. The

1 intent of this meeting is to confirm whether
2 or not we are on the same page in terms of how
3 we are interpreting that information.

4 We will independently verify the
5 numbers that are here based on this floor
6 plan. My concern is that I do not want to
7 shortchange this license or potential licensee
8 that's here before us, based on my
9 misunderstanding of what their information is.

10 And based on where we are right
11 now, keep in mind we just got these drawings
12 this morning, we have not had an opportunity
13 to sit down and do raw numbers to confirm that
14 they do or don't --

15 CHAIRPERSON MILLER: Okay.

16 MEMBER JONES: -- meet the
17 numbers. However, given that this opportunity
18 is here and they accepted this opportunity, I
19 would not want to not have this opportunity to
20 have them speak on their concerns and also
21 clarify any points of concern that we have.
22 This is a dialogue.

1 CHAIRPERSON MILLER: Good.

2 MEMBER JONES: Feel free, Mr.
3 Alberti.

4 MEMBER ALBERTI: Mr. Moore, I'm
5 getting a sense of -- to be quite honest with
6 you, I'm getting a sense of some resistance
7 here from you that --

8 MR. MOORE: Frustration.

9 MEMBER ALBERTI: -- you know --
10 frustration, frustration. I can only tell you
11 what I have observed as our experience with
12 other licensees is that if they cooperate with
13 this process that Mr. Jones is going through,
14 all right, things move very quickly and it
15 become obvious what -- where the Board is
16 going.

17 So I'm asking you to sort of kind
18 of drop the resistance a little, the
19 frustration and just cooperate. It may seem
20 like it's going to take some time, but things
21 move very quickly. Once we get this
22 information, you understand the kinds of

1 information -- every other licensee we have
2 had was able to return information to us very
3 quickly.

4 Knowing what I know about Safeway,
5 I expect you to be able to do the same. You
6 have got a lot of smart minds out there. And
7 so I expect this process to go very quickly if
8 you just kind of work with us and that's what
9 I'm asking.

10 MR. MOORE: Yeah.

11 CHAIRPERSON MILLER: Okay.

12 MEMBER SILVERSTEIN: Where do we
13 go from here?

14 CHAIRPERSON MILLER: I don't know.
15 Go forward. Let's go forward and get whatever
16 information we all need to move this forward.

17 MEMBER JONES: So based on where I
18 was before I got interrupted, I was trying to
19 convey to you that the way in which we make
20 the determination is based on a contiguous
21 space for the 6,000 square foot measure or
22 threshold.

1 Given that, if I were to look at
2 your drawing and it's up to you to make the
3 determination as to how you want to draw a
4 line that is going to outline your entire food
5 selling area, but I can clearly see a
6 mechanism or approach by which you could do
7 that, facilitate that in order to give me a
8 single contiguous space for your 6,000 square
9 foot or more Test 1 threshold measure.

10 Is that something that you can
11 foresee doing or is that something that you
12 are not understanding enough about what it is
13 I'm saying to be able to pull it together?

14 MR. JACOBS: Well, I think it's
15 more of a clarification.

16 MEMBER JONES: Yes, sir.

17 MR. JACOBS: We could definitely
18 take into consideration. I think, you know,
19 in reading the regs it said a 3 foot radius
20 from whatever the product was around. From
21 what I'm hearing from you, and let's just take
22 for instance one of the gondolas in the center

1 of the store.

2 MEMBER JONES: So help me. I'm
3 not totally familiar with those terms.

4 MR. JACOBS: Okay. I'll point to
5 the drawing you have, essentially, you know,
6 the long rectangle --

7 MEMBER JONES: Sorry, sir?

8 MR. JACOBS: -- shelving is the
9 gondola.

10 MEMBER JONES: Okay.

11 MR. JACOBS: It carries grocery
12 product of various different things.

13 MEMBER JONES: Understood.

14 MR. JACOBS: So let's just say for
15 instance that grocery gondola shelving is 36
16 inches deep. So from what I read from the
17 regs, then you would take 36 inches deep out
18 in front of that gondola, okay?

19 MEMBER JONES: Okay.

20 MR. JACOBS: So let's just say
21 from that face of the gondola to the other
22 face of the gondola is, essentially, 7 feet.

1 MEMBER JONES: Yes.

2 MR. JACOBS: So if I take 3 feet
3 on each side, okay, so I'm left with a foot.
4 Are you saying that that foot in between does
5 that go towards foot selling area or is that
6 considered as non-food selling area and I
7 should not, you know, count that as part of
8 the area?

9 MEMBER JONES: For Test 1 it
10 should be included.

11 MR. JACOBS: Test 1.

12 MEMBER JONES: For Test 2, it
13 should not.

14 MR. JACOBS: Okay. So for Test 1
15 it should be included. For Test 2 it should
16 not.

17 MEMBER JONES: Yes, sir.

18 MR. JACOBS: Okay.

19 MEMBER ALBERTI: Just a
20 clarification. Well, for Test 2 it will be
21 included in the denominator. Is that correct?

22 MEMBER JONES: In terms of my

1 understanding of what they were asking, I
2 stand by my response.

3 MEMBER ALBERTI: Okay.

4 MEMBER SHORT: Madam Chair?

5 MEMBER SILVERSTEIN: Let's make
6 sure we know what they were asking.

7 MR. JACOBS: Let me clarify again.
8 So let's just take for instance the area that
9 you were speaking of across from the check
10 stands. So we have this blue rectangle box
11 and in between that, you know, you have,
12 basically, the pink area which is circulation.
13 I'll call them circulation. And then you have
14 the blue area that is in front of that.

15 MEMBER JONES: Yes, sir.

16 MR. JACOBS: So what you are
17 saying is that, for Test 1, this area here
18 should be included as food selling area on
19 Test 1.

20 MEMBER JONES: For Test 1, sir.
21 Yes, sir.

22 MR. JACOBS: Then on Test 2 it

1 should not be included.

2 MEMBER JONES: That's correct.

3 MR. JACOBS: Okay.

4 MEMBER JONES: And Test 2, just to
5 be clear, your -- for Test 2 you are making
6 the determination of whether or not your
7 individual food category is representative of
8 5 percent or more of your food selling area.

9 Your food selling area is your
10 denominator in that instance.

11 MR. JACOBS: Okay.

12 MEMBER JONES: And that's where
13 Mr. Alberti was speaking to that that number
14 that we refer to, we call it F. F that
15 variable food selling area that you determine
16 in Test 1 is carried over and used as your
17 denominator in Test 2.

18 MR. JACOBS: Okay.

19 MEMBER JONES: So let's say, for
20 example, when you tie all of your food selling
21 areas together and you come up with a number,
22 let's say it's 22,000 square feet. F, your

1 food selling area, is now equal to 22,000
2 square feet. That F or 22,000 square feet
3 would then be used as the denominator to
4 divide into whatever your individual food
5 selling area criteria area for your individual
6 food categories.

7 MR. JACOBS: Okay.

8 MEMBER JONES: So for example,
9 fruits and vegetables, in Test 2, you would
10 take the exact measures that you indicated in
11 terms of 3 feet out --

12 MR. JACOBS: Right.

13 MEMBER JONES: -- and you would
14 not count that 1 foot between Display Case B
15 and Display Case A.

16 MR. JACOBS: A, right.

17 MEMBER JONES: You would only go
18 out 3 feet, that's the maximum you can go out,
19 so you wouldn't be able to take that 1 foot
20 that is in between those two cases and count
21 that towards an individual food category.

22 In that instance, your individual

1 food category would then be divided by F,
2 which is the 22,000 square feet. That's why
3 it's important to make the distinction between
4 how you count for Test 1 versus how you count
5 for Test 2.

6 MR. JACOBS: Okay. And so in Test
7 1, what you are saying is it has to be a
8 continuous area. So in the case of, let's
9 just say, produce, let's go over to the fruits
10 and vegetables, the little voided areas in
11 Test 1 would end up being blue that is pink.

12 MEMBER JONES: Correct.

13 MR. JACOBS: Okay.

14 MEMBER JONES: And on your second
15 sheet, AP2?

16 MR. JACOBS: Yes?

17 MEMBER JONES: AP2 assuming that
18 those boxes that are surrounding the display
19 cases are actually 3 feet out from the display
20 case, then this is done -- appears to have
21 been done correctly, in the sense of how we
22 interpret correct to be.

1 MR. JACOBS: Right.

2 MEMBER JONES: Okay. So in that
3 instance, you sum up all of your green boxes,
4 you add those all together, that becomes your
5 produce, your fresh fruits and vegetables
6 number. That number, let's say it's 5,000
7 square feet, you take that number and you
8 divide it by F from Test 1 --

9 MR. JACOBS: Okay. From Test 1.

10 MEMBER JONES: -- which was where,
11 in our example, we are saying is 22,000 square
12 feet and that's how you make the determination
13 of what your percentage is.

14 MR. JACOBS: Okay.

15 MEMBER JONES: Does that help
16 clarify how we interpret --

17 MR. JACOBS: Right.

18 MEMBER JONES: -- the process?

19 MR. JACOBS: You're taking the
20 total --

21 MEMBER JONES: Exactly.

22 MR. JACOBS: -- and divide by each

1 department and calculate.

2 MEMBER JONES: Sir, yes, sir.

3 MR. JACOBS: Okay. So let me ask
4 you this then, what makes the determination of
5 what is connected and what is not connected?
6 For instance, if I go back to --

7 MEMBER JONES: Are we on AP1?

8 MR. JACOBS: Yes, AP1.

9 MEMBER JONES: Okay.

10 MR. JACOBS: So in between, let's
11 just say the area that we are calling the
12 floral, which is non-food selling area. Now,
13 of course, I'm going to have a box that is
14 going to be around in blue. What makes the
15 determination of whether or not that gets the
16 entire area, because that's a non-food selling
17 area, so I'm assuming that blue would not go
18 into that area, correct?

19 MEMBER JONES: Not necessarily.
20 Because you are doing the 6,000 square foot
21 test --

22 MR. JACOBS: Um-hum.

1 MEMBER JONES: -- your area, that
2 is your food selling area, needs to be
3 contiguous, but it doesn't necessarily mean
4 that every single thing that is in there has
5 to be a --

6 MR. JACOBS: Food selling --

7 MEMBER JONES: -- food item.
8 Right? That will be fleshed out as part of
9 your Test 2.

10 MR. JACOBS: Um-hum.

11 MEMBER JONES: So if you try to
12 game the system, I'm not saying that you are,
13 but one of the reasons why this test is in
14 here is you can make your -- in Test Area 1,
15 Test 1, you can make your food selling area
16 contiguous and as large or as small as you
17 would like it to be and you can include
18 whatever it is you would like in that 6,000
19 square feet plus area.

20 MR. JACOBS: Um-hum.

21 MEMBER JONES: But when you get
22 down to Test 2 and you are looking at your

1 individual food categories, that same area
2 where it's a floral, for example, that's not
3 one of the food categories.

4 MR. JACOBS: Right.

5 MEMBER JONES: Therefore, that
6 wouldn't be counted towards your 5 percent or
7 greater number for your individual food
8 categories. And it will be fleshed out there.

9 So you can make the determination,
10 you can draw the line surrounding your food
11 selling area to be inclusive of whatever it is
12 you think is in your best interest.

13 MR. JACOBS: Okay.

14 MEMBER JONES: To make it work.

15 MR. JACOBS: As long as it's
16 continuous?

17 MEMBER JONES: As long as it's
18 contiguous.

19 MR. JACOBS: There is no break in
20 it?

21 MEMBER JONES: No breaks in it.

22 MR. JACOBS: Right.

1 MEMBER JONES: Right?

2 MR. JACOBS: So it could be --

3 MEMBER JONES: Exactly.

4 MR. JACOBS: -- as squiggly as it
5 needs to be --

6 MEMBER JONES: Sir, yes, sir.

7 MR. JACOBS: -- or as square as it
8 needs to be, but it can't be broken up and
9 splotchy in between?

10 MEMBER JONES: Correct.

11 MR. JACOBS: Okay.

12 MEMBER JONES: All right. And
13 that area, just to be clear, that 6,000 plus
14 square foot area can be inclusive of floral.
15 It could be inclusive of tires. It can be
16 inclusive of whatever it is you would like.
17 However, when you get to Test 2, just realize
18 the impact of that on how you are going to
19 meet your 5 percent, because that denominator
20 is being --

21 MR. JACOBS: Right.

22 MEMBER JONES: -- carried from

1 Test 1.

2 MR. JACOBS: Right. It affects
3 each department --

4 MEMBER JONES: Exactly.

5 MR. JACOBS: -- in AP2.

6 MEMBER JONES: Correct.

7 MR. JACOBS: Okay.

8 MEMBER JONES: Which is why --
9 this is why this was done this way in order to
10 have the ability to have checks and balances.

11 MR. JACOBS: And let me go back to
12 one of the things you started with. As far as
13 dimensions, you mentioned dimensions.

14 MEMBER JONES: Sir, yes, sir.

15 MR. JACOBS: Now, you know, of
16 course, if you have a drawing that is scalable
17 1/8th inch, is that sufficient or do you --
18 are you asking for dimensions to show that
19 it's actually 3 feet or how do you want that
20 shown?

21 MEMBER JONES: So our preference
22 and in order to help us expedite the

1 processing of this, the more information that
2 you can provide to make it easier for us, the
3 faster it will be for us to turn it around.

4 MR. JACOBS: Okay.

5 MEMBER JONES: So if you actually
6 put dimensions on here that say this length is
7 32 feet, this length is 218 feet, then that's
8 not something where we would have to get out
9 a ruler and then measure it across to make the
10 determination and fill in those numbers
11 ourselves.

12 MR. JACOBS: Um-hum.

13 MEMBER JONES: But we are not
14 telling you that you have to do that, but it
15 just makes it more expeditious for us to do
16 that. Excuse me. It makes it faster for us
17 to do it when you provide the dimensions as
18 opposed to us using a scale ruler to make that
19 determination.

20 MR. JACOBS: Right. Okay.

21 MEMBER JONES: Fair enough?

22 MR. JACOBS: Fair enough.

1 MEMBER JONES: Okay. So with
2 that, the only other concern or question that
3 I had is if for whatever reason, which I can't
4 possibly fathom a situation or scenario which
5 you would do this, but if you are not using
6 the 6,000 square foot test and you choose to
7 go to the 50 percent square foot test --
8 excuse me, 50 percent test for Test 1, then
9 there -- we would need to have the total
10 square footage of the entire space, not just
11 the selling area as well as the non-selling
12 area, which is clearly -- well, which has been
13 defined in terms of bathrooms, storage units,
14 areas that are not accessible to the public.

15 And this clearly delineated what
16 your non-food selling areas would be as well.
17 However, given what you have presented here
18 today, I don't see that you would have to go
19 down that path, but if you did, then please
20 note that we would need all three of those at
21 a minimum in order for us to make a
22 determination for the 50 percent test as well.

1 MR. JACOBS: So for the 50 percent
2 test, you need -- basically, it's total gross
3 square footage?

4 MEMBER JONES: Of everything.

5 MR. JACOBS: Of everything.

6 MEMBER JONES: The whole space.

7 MR. JACOBS: Okay. And then you
8 would need, basically, the square footage of
9 just grocery selling area that is accessible
10 to the customers?

11 MEMBER JONES: Actually, not quite
12 that. So what we do is we take the total
13 square footage. We subtract from that the
14 non-selling area.

15 MR. JACOBS: Okay.

16 MEMBER JONES: Okay. And that
17 gives us what is now defined as the selling
18 area. From there, we take that selling area
19 number, which is in our -- in how we do our
20 nomenclature, that's S, which is selling area,
21 is equal to T, which is total square footage,
22 minus U, which is non-selling area.

1 MR. JACOBS: Okay.

2 MEMBER JONES: That S is then used
3 to determine what your food selling area is by
4 taking the non-food selling area, subtracting
5 that from S. And that leaves you with F. So
6 we don't do a measurement to determine what F
7 is.

8 MR. JACOBS: Right.

9 MEMBER JONES: Right. We do the
10 math and that tells us what F is from there.

11 MR. JACOBS: Okay. And that's the
12 50 percent test?

13 MEMBER JONES: Exactly.

14 MR. JACOBS: Okay.

15 MEMBER JONES: So like I said, I
16 don't imagine that you would go down that
17 path, but I wanted to take the opportunity to
18 explain that to you in the event that for
19 whatever reason, you would like to explore
20 either of those options as you are going
21 through your assessment.

22 MR. JACOBS: Right. Okay.

1 MEMBER JONES: And given that,
2 that's all I had. And thank you for your
3 patience and thank you for your time today.
4 I appreciate your attention to this matter.
5 Thank you.

6 MEMBER ALBERTI: Could I just add
7 one thing?

8 MEMBER JONES: Certainly.

9 CHAIRPERSON MILLER: Sure. Let's
10 open it up now.

11 MEMBER ALBERTI: If you want -- I
12 was just thinking, Mr. Jones referred to some
13 formulas here. As simple as they are, but if
14 you want them written down, I'm sure we could
15 provide them for you.

16 MR. JACOBS: Oh, absolutely.

17 MEMBER JONES: Sir, yes, sir.

18 MR. JACOBS: That would be very
19 helpful.

20 MEMBER ALBERTI: Great. Okay.

21 MR. JACOBS: Absolutely.

22 MEMBER ALBERTI: I just wanted to

1 offer that up.

2 MR. JACOBS: Sure. Thank you.

3 CHAIRPERSON MILLER: Mr.
4 Silverstein?

5 MEMBER SILVERSTEIN: And are you
6 comfortable with our definition of non-selling
7 area for the 50 percent?

8 MR. JACOBS: Yeah, I think I have
9 a good understanding of what he is speaking
10 of. You know, it seems a little bit simpler,
11 but we will run it both ways and see how it
12 shakes out.

13 MEMBER SILVERSTEIN: Thank you.

14 CHAIRPERSON MILLER: Other
15 questions? I have a question. I really just
16 got to see these plans here, so but I'm
17 wondering did you come to this hearing and
18 submit these plans with the understanding that
19 they showed that you met the test or not?

20 MR. JACOBS: No.

21 CHAIRPERSON MILLER: You weren't
22 really there yet?

1 MR. MOORE: Yes is the answer to
2 your question to the 6,000 square foot test,
3 yes.

4 CHAIRPERSON MILLER: Yes. Okay.
5 You believed the plans show that. Okay. And
6 do they show, based on your understanding of
7 the regs and stuff, that you meet the 5
8 percent requirements?

9 MR. MOORE: By a significant
10 margin.

11 CHAIRPERSON MILLER: Okay. The
12 measurements are here for us to see?

13 MR. MOORE: Yes.

14 CHAIRPERSON MILLER: Okay.

15 MR. MOORE: Absolutely. Madam
16 Chair, I'll say this. The process has been
17 quite halting to us. We filed the application
18 in November. We are building a new store. We
19 are trying to open a new store. We need to
20 open a new store with the beer and wine there.
21 We have met with the ANC. We are trying our
22 best to get this done and we have had some,

1 Mr. Alberti, frustrations because we -- when
2 we filed the application, we thought that we
3 would be before the Board the first week in
4 December.

5 Then that slipped, then Christmas
6 and then it slipped in January and it just
7 goes on and on and on. What we think, maybe
8 we are wrong, is a fairly simple answer.

9 MEMBER ALBERTI: Mr. Moore, you're
10 not the only one who has been frustrated.

11 MR. MOORE: Yes.

12 MEMBER ALBERTI: I mean almost
13 everyone starts off being frustrated, but as
14 I tried to do with you, I tried to steer you
15 to just listening to what we have to say.

16 MR. MOORE: I promptly put my foot
17 in my mouth.

18 MEMBER ALBERTI: And it goes
19 quickly when we start. You are not alone.
20 You are typical of everyone we had here.

21 CHAIRPERSON MILLER: Mr.
22 Silverstein?

1 MEMBER SILVERSTEIN: Mr. Moore,
2 you seem to think that just because it looks
3 like a duck, walks like a duck and quacks like
4 a duck, it is a duck. But we are required to
5 take the DNA of the duck and if you help us
6 with that, we will be able to get through this
7 very quickly. It has not been our choice.

8 MR. MOORE: It is our intention to
9 respond as has been requested. We would ask
10 the Board if there is a mechanism to help us
11 to get the placarding period started in the
12 event that we submit something to you.

13 CHAIRPERSON MILLER: Okay.

14 MR. MOORE: The Board only meets
15 once a week, you know, and if it snows, who
16 knows when they are going to meet.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER SHORT: Madam Chair?

19 CHAIRPERSON MILLER: When is --
20 oh, go ahead.

21 MEMBER SHORT: Can I make a
22 suggestion, Madam Chair, that we just recess

1 this for about 30 minutes or 15 minutes and I
2 really think that if the two parties get
3 together, it's very simplistic looking at this
4 plan what he is asking for.

5 And I really think on the drawings
6 that were submitted, just a couple of
7 adjustments could be enough to get Safeway
8 where they need to be.

9 MR. MOORE: Thank you, sir.

10 MEMBER SHORT: That's just a
11 suggestion. I did get a little planning
12 training when I was working at the Government
13 before.

14 CHAIRPERSON MILLER: Yes, that's
15 right.

16 MEMBER SHORT: I do understand
17 this. I do understand what they want. And
18 the bottom line is I think it's very
19 simplistic. I do think it's that way. If
20 it's not, 15 minutes should not make a lot of
21 difference.

22 CHAIRPERSON MILLER: I'm not quite

1 inclined to do that, but I am inclined to get
2 this resolved as quickly as possible and
3 committed to doing that, but we have another
4 case right after you that is waiting. And I
5 think that it might take a little bit just to
6 study the plans a little.

7 Yes, Mr. Jones?

8 MEMBER JONES: Just in terms of
9 the concerns you raised, we are not at all
10 oblivious to the concern that you have in
11 terms of trying to get this done
12 expeditiously. And I can assure you as an
13 individual Board Member that although we only
14 meet once a week, that we work seven days a
15 week.

16 So as soon as this information is
17 provided, I will -- once you provide it to
18 ABRA, ABRA will provide it to us and we begin
19 that process of reviewing and assessing that
20 that day. It's not something that waits until
21 the following Wednesday for us to pick up and
22 look at. At least I can say that from my

1 standpoint as an individual Board Member.

2 MR. MOORE: Thank you. I need the
3 Board to --

4 CHAIRPERSON MILLER: I --

5 MR. MOORE: -- come to that
6 conclusion.

7 CHAIRPERSON MILLER: Okay. I also
8 want to say that I appreciate what you said at
9 the beginning of the hearing, that I don't
10 think that you are saying just because you are
11 Safeway and you look like a grocery store, we
12 should let you off the hook.

13 I understand what you are saying
14 about how you have been recognized by the D.C.
15 Government a million times, you know, that you
16 are a grocery store.

17 So I also want to ask you what is
18 your time constraint? What is your -- when do
19 you plan to open?

20 MR. MOORE: The floor plans open
21 in June.

22 CHAIRPERSON MILLER: Okay.

1 MR. MOORE: We are dealing with a
2 45 day placarding period.

3 CHAIRPERSON MILLER: Right.

4 MR. MOORE: Now, if you take just
5 the 45 day placarding period, we are okay. We
6 get a protest and then things fall apart.

7 CHAIRPERSON MILLER: Okay. Okay.
8 And if you didn't make this test, there would
9 be something wrong with our regulations, so I,
10 you know, expect it can be done and I think
11 that --

12 MEMBER JONES: That's kind of
13 foul.

14 CHAIRPERSON MILLER: I'm sorry?
15 If you understand what Mr. Jones is saying and
16 you think you can accommodate the plans to
17 that, you know, to analyze it in that way and
18 make that presentation?

19 MR. MOORE: That's not a problem.

20 CHAIRPERSON MILLER: No.

21 MR. MOORE: I did have one last
22 question for Mr. Jones --

1 CHAIRPERSON MILLER: Okay.

2 MR. MOORE: -- on the AP1. The
3 dimension that you used to calculate the area,
4 does that have to be 3 feet out within the
5 fixture or just that line can fall however it
6 falls?

7 MEMBER JONES: The line can fall
8 however it is you determine to be appropriate.
9 It does not have to meet the 3 feet --

10 MR. MOORE: That's all I needed to
11 know.

12 MEMBER JONES: -- for Test 1. So
13 Test 2 is the only place where that 3 foot
14 measure comes into play.

15 MR. MOORE: Overall size.

16 MR. JACOBS: Okay. Thank you,
17 sir.

18 MR. MOORE: Madam Chair?

19 CHAIRPERSON MILLER: Yes?

20 MR. MOORE: If I could persuade
21 Mr. Jacobs to put on his snow shoes and come
22 through the snow tomorrow morning and revise

1 this drawing and submit it to the Board, Mr.
2 Jones had said he is willing to look at them.
3 I don't know if it would be tomorrow or not,
4 but I guess what I'm asking here --

5 CHAIRPERSON MILLER: Okay.

6 MR. MOORE: -- is can the Board
7 take a vote to give one of its Members or a
8 plurality of one of its Members the authority
9 to let us go to a placarding period to get
10 that clock going?

11 CHAIRPERSON MILLER: I think we
12 have to discuss that. Okay. So we will
13 either take it up next Wednesday, hopefully,
14 or consider if it's some other kind of urgent
15 situation. I don't know. I can't commit to
16 that yet. We would have to talk about that,
17 okay, whether we do it earlier.

18 But the sooner you do get it in,
19 the Agency is good about getting the
20 information out to us and we could evaluate it
21 before Wednesday, you know, each of us
22 studying whatever you submit. Okay. So we

1 are happy, you know, to do that.

2 Okay. Anything else? Are you all
3 clear?

4 MR. JACOBS: Yes.

5 CHAIRPERSON MILLER: Okay.

6 MR. MOORE: Thank you.

7 CHAIRPERSON MILLER: Thank you.

8 MR. JACOBS: Thank you.

9 CHAIRPERSON MILLER: Okay. All
10 right. We are just going to take a five
11 minute break and when we will back for the
12 next case.

13 (Whereupon, the Fact-Finding
14 Hearing in the above-entitled matter was
15 concluded at 2:36 p.m.)

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